IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Date of decision: 05.10.2007

Writ Petition No. 175 (S/S) of 2004

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 05.10.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

IN THE HIGH COURT OF UTARAKHAND AT NAINITAL

Writ Petition No. 175 (S/S) of 2004

Ashwani Kumar S/o Sri V.B. Pruthi
R/o B2 A/99 Janakpuri New Delhi
Presently residing at House No. 7/8
Prem, Nagar Dehradun.

……. Petitioner.

Versus

(1) Union of India through Cabinet Secretary, Govt. of India, New Delhi.
(2) Director C.B.I./SPE/CGO Complex Lodhi Road New Delhi.
(3) Deputy Director (Administration) and D.I.G. C.B.I. Head Office New Delhi.
(4) Superintendent of Police, C.B.I. Residential Colony Seema Dwar Dehradun.
(5) Dy. Superintendent of Police Residential Colony Seema Dwar, Dehardun.

…….. Respondents.

Shri Manoj Tiwari, Advocate for petitioner.
Standing Counsel for the respondents.

Hon. Prafulla C. Pant, J.

By means of this petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 23.05.2003, passed by C.B.I. Head Office, New Delhi, whereby the petitioner

has been relieved from the Inspector C.B.I., Dehradun on premature repatriation to his Parent Department, Northern Railway.

(2) Heard Sri Manoj Tiwari, learned counsel for the petitioner.

(3) Brief facts of the case are that the petitioner was originally appointed as Accounts Assistant with Indian Railways in the year 1980. Later on in the year 1993, he was selected for the post of Vigilance Inspector in the Indian Railways and served in said capacity till 1998. On 05.10.1998, petitioner was taken on deputation in C.B.I. as Railway Sectional Officer and given posting on Dehradun. It is alleged by the petitioner that his posting on deputation was for five years. It is further stated in the writ petition that the petitioner performed his duties with C.B.I. with full devotion and integrity and utmost care. In 2002, considering his performance, the petitioner was given appointment as Inspector of Police in C.B.I. However, before completing his period of service of five years, he is relieved by the impugned order, directing the petitioner to join his duties in Parent Department. Challenging the impugned order dated 06.06.2003, it is stated in Para 18 of the written statement that as per Para 9 of the memorandum of Government of India, Ministry of Personnel Public Grievances, normally when an employee is appointed on deputation / foreign service, his services are placed at the disposal of the parent Ministry / Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of

reasonable period to the lending Ministry / Department and the employee concerned.

(4) Learned counsel for the petitioner submitted that no advance intimation of reasonable period was given to the petitioner nor to the lending Department. But it is settled principle of law that a deputationist has no legal right to continue in a post and his services are liable to be repatriated to his parent Department, where he holds lien. Right to continue on a post accrues from the conditions subject to which a person is appointed on a particular post. Annexure 2 to the writ petition is the order whereby the petitioner was taken on deputation by the C.B.I.. The said order is being reproduced below:-

"The Deputy Inspector General of Police and Dy. Director (Admn.) Central Bureau of Investigation, SPE hereby appoints Shri Ashwani Kumar, RSO, Northern Railway HQrs. New Delhi, as Inspector of Police on deputation basis in Delhi Special Police Establishment Division of CBI for a period not exceeding 05 (five) years in the first instance with effect from the forenoon of 01.10.2002. He is posted to CBI, ACB, Dehradun.

On appointment as Inspector in CBI, he will be governed by the standard terms of deputation as contained in DP & T O.M. dated 05.01.94 and as amended from time to time."

From the above order, it is clear that the petitioner's posting was for a period not exceeding five years. In other words, the petitioner could have been repatriated even before completion of five years as expression 'not exceeding' is affixed to expression '05 (five) years'. It can be presumed that the petitioner has joined

his duties on a post of deputation only after looking into the conditions under which he was given appointment.

(5) In the counter affidavit, the facts relating to devotion to duty etc. are denied by the respondents. However, this Court is not required to see at this stage whether there was sufficient reason with the C.B.I. to send back petitioner to his parent Department or not. What is material for the purposes of his case is whether the petitioner has right to continue on the post and is there any illegality in the order whereby the petitioner is relived and directed to join his duties in parent Department.

(6) Learned counsel for the petitioner drew attention of this Court to principle of law laid down in ***Union of India Through Govt. Pondichery and another Vs. Ramakrishan and others; AIR 2005 Supreme Court 4295.*** He particularly referred Para 32 of the said case, which is reproduced below:

"Ordinarily, deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which on officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an

order of reversion can be questioned when the same is mala fide.……"

But there is no malice alleged in the present writ petition against the respondents.

(7) Considering the conditions of service applicable to the petitioner as discussed above, this Court is of the view that the impugned order suffers from no illegality. Therefore, for the reasons as discussed above, this writ petition is liable to be dismissed. The same is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 05.10.2007.
NS